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**ADMINISTRATIVE RULES**

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SOAHR #2006-076 (TY-A)

DEPARTMENT OF TREASURY

MICHIGAN GAMING CONTROL BOARD

**MICHIGAN GAMING CONTROL BOARD ADMINISTRATIVE RULES**

Filed with the Secretary of State on May 16, 2008

These rules take effect 7 days after filing with the Secretary of State.

(By authority conferred on the Michigan gaming control board by section 4 of Initiated Law of 1996, MCL 432.204)

R 432.1401, R 432.1402, R 432.1403, R 432.1404, R 432.1405, R 432.1406 and R 432.1407 of the Michigan Administrative Code are amended as follows:

**PART 4. PUBLIC OFFERING OF DEBT OR EQUITY FOR MICHIGAN CASINOS**

**R 432.1401 Applicability.**

Rule 401.(1) This part applies to a publicly traded corporation applying for or holding a casino license in Michigan and to persons applying for or holding a casino license in Michigan that are owned, directly or indirectly, by a publicly traded corporation, whether through a subsidiary or intermediary company of a publicly traded corporation, if the ownership interest is, directly or indirectly, or will be upon approval by the board, more than 5% of the person applying for or holding the casino license.

(2) This part also applies to persons, other than publicly traded corporations, that apply for or hold a casino license in Michigan or have or will have, upon approval of the board, more than a 5% ownership interest in a person that has applied for or holds a casino license in Michigan and makes a public offering of its debt securities.

(3) If the board determines that a publicly traded corporation, a subsidiary, an intermediary company, a holding company of a publicly traded corporation, or other person has the actual ability to exercise influence over a person applying for or holding a casino license in Michigan, regardless of the percentage of ownership possessed by the publicly traded corporation, subsidiary, intermediary company, holding company of a publicly traded corporation, or other person, the board may require that person to comply with this part.

(4) This part shall not apply to an institutional investor unless it has more than a 15% interest in a person applying for or holding a casino license or does not meet the standards of section 6c(1) of the act for waiver of the eligibility and suitability requirements for qualification or licensure under the act or these rules.

**R 432.1402 Public offerings.**

Rule 402. A person applying for or holding a casino license in Michigan, or a person that has or upon board approval will have more than a 5% ownership interest in a person applying for or holding a casino

license in Michigan that commences a public offering of debt or equity securities must notify the board regarding a public offering of the securities required to be registered with the securities and exchange commission or regarding any other type of public offering not later than 10 business days after the initial filing of a registration statement with the securities and exchange commission or, regarding any other type of public offering, not later than 10 business days before the public use or distribution of any offering document, if either of the following provisions applies:

(a) The person that is applying for or holding the casino license or other person that has or upon board approval will have more than a 5% ownership interest in a person that is applying for or holding the casino license and that intends to issue the securities is not a publicly traded corporation.

(b) The person applying for or holding the casino license or other person that has or upon board approval will have more than a 5% ownership interest in a person applying for or holding the casino license and that intends to issue the securities is a publicly traded corporation and the proceeds of the offering, in whole or in part, are intended to be used for any of the following purposes:

(i) To pay for the construction of a casino or a casino enterprise to be owned or operated by a person applying for or holding the casino license in Michigan.

(ii) To acquire any direct or indirect ownership interest in a casino or casino enterprise located in Michigan.

(iii) To finance the operation of a casino or casino enterprise in Michigan by a person applying for or holding a casino license.

(iv) To retire or extend obligations incurred for 1 or more purposes set forth in paragraphs (i), (ii), and (iii) of this subdivision.

#### R 432.1403 Notice of public offering.

Rule 403. A person notifying the board of a public offering must disclose all of the following information:

(a) A description of the securities to be offered.

(b) The proposed terms upon which the securities are to be offered.

(c) The anticipated gross and net proceeds of the offering, including a detailed list of expenses.

(d) The use of the proceeds.

(e) The name and address of the lead underwriter, if any.

(f) The form of the underwriting agreements, if any, the agreement underwriters, if any, and the selected dealers agreements, if any.

(g) A statement of intended compliance with all applicable federal, state, local, and foreign securities laws.

(h) The names and addresses of the issuer's counsel for the public offering, independent auditors, and special consultants for the offering.

(i) If any securities to be issued are not to be offered to the general public, then the general nature of the offerees and the form of the offering.

(j) Any other offering material requested by the board.

#### R 432.1404 Fraudulent and deceptive practices prohibited.

Rule 404. A disciplinary action may be initiated against a person applying for or holding a casino license or other person covered by this part if any of the following provisions apply to the person in connection with the purchase or sale of any security issued by a person covered by this part:

(a) The person is found guilty of a violation of rule 10b-5, 17 C.F.R. § 240.10b-5 promulgated by the securities and exchange commission under section 10(b) of the securities exchange act of 1934, 15 U.S.C. § 78j.

(b) The person pleads nolo contendere to a violation of rule 10b-5, 17 C.F.R. § 240.10b-5, promulgated by the securities and exchange commission under section 10(b) of the securities exchange act of 1934, 15 U.S.C. § 78j.

(c) The person is the subject of a final cease and desist order with respect to a violation of rule 10b-5, 17 C.F.R. § 240.10b-5, promulgated by the securities and exchange commission under section 10(b) of the securities exchange act of 1934, 15 U.S.C. § 78j.

(d) The person is subject to an order of permanent injunction issued on the basis of a violation of rule 10b-5, 17 C.F.R. § 240.10b-5 promulgated by the securities and exchange commission under section 10(b) of the securities exchange act of 1934, 15 U.S.C. § 78j.

(e) The person is the subject of a similar final action taken on the basis of a violation of rule 10b-5, 17 C.F.R. § 240.10b-5, promulgated by the securities and exchange commission under section 10(b) of the securities exchange act of 1934, 15 U.S.C. § 78j.

#### R 432.1405 Submission of proxy and information statements.

Rule 405. Each publicly traded corporation that applies for or holds a casino license must, within 10 business days after distributing to its security holders a proxy statement or information statement that is subject to regulation 14A or 14C of the securities and exchange commission, submit the proxy statement or information statement to the board.

#### R 432.1406 Reporting requirements.

Rule 406.(1) If a publicly traded corporation or other person that applies for or holds a casino license files any of the following documents with the securities and exchange commission, the person must file 1 copy of each document with the board within 10 business days of filing the documents with the securities and exchange commission:

- (a) Form 10.
- (b) Form 10-Q.
- (c) Form 10-K.
- (d) Form 8-K.
- (e) Form 1-A.
- (f) Registration Statement S-1.
- (g) Registration Statement SB-2.
- (h) Registration Statement 10-SB.
- (i) Report 10-KSB.
- (j) Report 10-QSB.
- (k) Schedule 13e-3.
- (l) Schedule 14D-9.
- (m) A filing required by rule 14f-1 promulgated under the securities exchange act of 1934, 15 U.S.C. § 78a et seq.

(2) If a publicly traded corporation or other person that applies for or holds a casino license any material document filed with the securities and exchange commission by any other person relating to the publicly traded corporation, the person must file 1 copy of the document with the board within 10 business days after receipt of the material.

(3) A publicly traded corporation or other person that applies for or holds a casino license must file a list of record holders of its voting securities with the board annually.

(4) A person applying for or holding a casino license must report to the board the election or appointment of a director or officer of that applicant or licensee or a holding company of that applicant or licensee who is actively and directly engaged in the administration or supervision of that applicant or licensee.

(5) If a person that applies for or holds a casino license learns that a key person or substantial owner of the publicly traded corporation has disposed of his or her voting securities, the person must provide the board with written notice of the transaction within 10 business days of becoming aware of it.

(6) A person who applies for or holds a casino license and all other persons covered by this part- must file any other document requested by the board to ensure compliance with the act or this part within 30 days of a board request or at another time established by the board.

R 432.1407 Required charter provisions.

Rule 407.(1) A person covered by this part that applies for or holds a casino license shall include all of the following provisions, or similar provisions approved by the board under subsection (c), in its organizational documents:

*"The [corporation] [partnership] [limited liability company] shall not issue more than five percent (5%) of any voting securities or other voting interests to a person except in accordance with the provisions of the Michigan Gaming Control and Revenue Act, MCL 432.201 et seq. and the rules promulgated thereunder.*

*(a) The issuance of any voting securities or other voting interests in violation thereof shall be void and such voting securities or other voting interests shall be deemed not to be issued and outstanding until one (1) of the following occurs:*

*(1) The [corporation] [partnership] [limited liability company] shall cease to be subject to the jurisdiction of the board.*

*(2) The board shall, by affirmative action, validate said issuance or waive any defect in issuance.*

*(b) No voting securities or other voting interests issued by the [corporation] [partnership] [limited liability company] and no interest, claim, or charge of more than five percent (5%) therein or thereto shall be transferred in any manner whatsoever except in accordance with the provisions of the act and rules promulgated thereunder. Any transfer in violation thereof shall be void until one (1) of the following occurs:*

*(1) The [corporation] [partnership] [limited liability company] shall cease to be subject to the jurisdiction of the board.*

*(2) The board shall, by affirmative action, validate said transfer or waive any defect in said transfer.*

*(c) If the board at any time determines that a holder of voting securities or other voting interests of this [corporation] [partnership] [limited liability company] shall be denied the application for transfer, then the issuer of such voting securities or other voting interests may, within thirty (30) days after the denial, purchase such voting securities or other voting interests of such denied applicant at the lesser of:*

*(1) the market price of the ownership interest; or*

*(2) the price at which the applicant purchased the ownership interest; unless such voting securities or other voting interests are transferred to a suitable person (as determined by the board) within thirty (30) days after the denial of the application for transfer of ownership.*

*(d) Until such voting securities or other voting interests are owned by persons found by the board to be suitable to own them, the following restrictions must be followed:*

*(1) The [corporation] [partnership] [limited liability company] shall not be required or permitted to pay any dividend or interest with regard to the voting securities or other voting interests.*

*(2) The holder of such voting securities or other voting interests shall not be entitled to vote on any matter as the holder of the voting securities or other voting interests, and such voting securities or other voting interests shall not for any purposes be included in the voting securities or other voting interests of the [corporation] [partnership] [limited liability company] entitled to vote.*

*(3) The [corporation] [partnership] [limited liability company] shall not pay any remuneration in any form to the holder of the voting securities or other voting interests as provided in this paragraph."*

(2) A person covered by this part that applies for a casino license must be in compliance with subrule (1) of this rule before the board issues the person a license.

(3) A person who applies for or holds a casino license must submit charter provisions similar to the provisions in subrule (1) of this rule to the board not less than 30 days before the public offering for approval. The board shall notify the person, in writing, that the charter provisions are acceptable.